

ASSEMBLY BILL

No. 1066

Introduced by Assembly Member Jerome Horton

February 22, 2005

An act to amend Sections 19130 and 19131 of the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1066, as introduced, Jerome Horton. Public services contracts.

Existing law authorizes state agencies to use personal services contracts if, among other things, the agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the state, provided that specified conditions are met. Existing law also requires any state agency that proposes to execute certain types of personal services contracts to notify the State Personnel Board of the proposed contract, and requires the board, upon receipt of this notice, to contact all organizations that represent state employees who perform the type of work to be contracted, as provided.

This bill would add the condition that a state agency may not submit a proposed contract for review if that state agency, in the preceding 12 month period, submitted a contract for the same services to be performed by the same contractor for which the State Personnel Board made a determination that the contract did not satisfy the specified conditions for a personal service contract. This bill would provide that all personal services contracts are of no force and effect until approved by the State Personnel Board, as provided.

This bill would require any state department or agency that proposes to enter into a contract that is subject to State Bargaining Unit 12 to notify, at least 10 days before entering into the contract, any employee organization that may be affected by the contract.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19130 of the Government Code is
2 amended to read:
3 19130. The purpose of this article is to establish standards for
4 the use of personal services contracts.
5 (a) Personal services contracting is permissible to achieve cost
6 savings when all the following conditions are met:
7 (1) The contracting agency clearly demonstrates that the
8 proposed contract will result in actual overall cost savings to the
9 state, provided that:
10 (A) In comparing costs, there shall be included the state's
11 additional cost of providing the same service as proposed by a
12 contractor. These additional costs shall include the salaries and
13 benefits of additional staff that would be needed and the cost of
14 additional space, equipment, and materials needed to perform the
15 function.
16 (B) In comparing costs, there shall not be included the state's
17 indirect overhead costs unless these costs can be attributed solely
18 to the function in question and would not exist if that function
19 was not performed in state service. Indirect overhead costs shall
20 mean the pro rata share of existing administrative salaries and
21 benefits, rent, equipment costs, utilities, and materials.
22 (C) *The state agency submitting the proposed or executed*
23 *contract has not, within the preceding 12-month period,*
24 *submitted a contract for the same services to be performed by the*
25 *same contractor for which the State Personnel Board made a*
26 *determination that the contract did not satisfy a condition of this*
27 *section.*
28 (D) In comparing costs, there shall be included in the cost of a
29 contractor providing a service any continuing state costs that
30 would be directly associated with the contracted function. These
31 continuing state costs shall include, but not be limited to, those
32 for inspection, supervision, and monitoring.
33 (2) Proposals to contract out work shall not be approved solely
34 on the basis that savings will result from lower contractor pay
35 rates or benefits. Proposals to contract out work shall be eligible

1 for approval if the contractor's wages are at the industry's level
2 and do not significantly undercut state pay rates.

3 (3) The contract does not cause the displacement of civil
4 service employees. The term "displacement" includes layoff,
5 demotion, involuntary transfer to a new class, involuntary
6 transfer to a new location requiring a change of residence, and
7 time base reductions. Displacement does not include changes in
8 shifts or days off, nor does it include reassignment to other
9 positions within the same class and general location.

10 (4) The contract does not adversely affect the state's
11 affirmative action efforts.

12 (5) The savings shall be large enough to ensure that they will
13 not be eliminated by private sector and state cost fluctuations that
14 could normally be expected during the contracting period.

15 (6) The amount of savings clearly justify the size and duration
16 of the contracting agreement.

17 (7) The contract is awarded through a publicized, competitive
18 bidding process.

19 (8) The contract includes specific provisions pertaining to the
20 qualifications of the staff that will perform the work under the
21 contract, as well as assurance that the contractor's hiring
22 practices meet applicable nondiscrimination, affirmative action
23 standards.

24 (9) The potential for future economic risk to the state from
25 potential contractor rate increases is minimal.

26 (10) The contract is with a firm. A "firm" means a
27 corporation, partnership, nonprofit organization, or sole
28 proprietorship.

29 (11) The potential economic advantage of contracting is not
30 outweighed by the public's interest in having a particular
31 function performed directly by state government.

32 (b) Personal services contracting also shall be permissible
33 when any of the following conditions can be met:

34 (1) The functions contracted are exempted from civil service
35 by Section 4 of Article VII of the California Constitution, which
36 describes exempt appointments.

37 (2) The contract is for a new state function and the Legislature
38 has specifically mandated or authorized the performance of the
39 work by independent contractors.

1 (3) The services contracted are not available within civil
2 service, cannot be performed satisfactorily by civil service
3 employees, or are of such a highly specialized or technical nature
4 that the necessary expert knowledge, experience, and ability are
5 not available through the civil service system.

6 (4) The services are incidental to a contract for the purchase or
7 lease of real or personal property. Contracts under this criterion,
8 known as “service agreements,” shall include, but not be limited
9 to, agreements to service or maintain office equipment or
10 computers that are leased or rented.

11 (5) The legislative, administrative, or legal goals and purposes
12 cannot be accomplished through the utilization of persons
13 selected pursuant to the regular civil service system. Contracts
14 are permissible under this criterion to protect against a conflict of
15 interest or to insure independent and unbiased findings in cases
16 where there is a clear need for a different, outside perspective.
17 These contracts shall include, but not be limited to, obtaining
18 expert witnesses in litigation.

19 (6) The nature of the work is such that the Government Code
20 standards for emergency appointments apply. These contracts
21 shall conform with Article 8 (commencing with Section 19888)
22 of Chapter 2.5 of Part 2.6.

23 (7) State agencies need private counsel because a conflict of
24 interest on the part of the Attorney General’s office prevents it
25 from representing the agency without compromising its position.
26 These contracts shall require the written consent of the Attorney
27 General, pursuant to Section 11040.

28 (8) The contractor will provide equipment, materials, facilities,
29 or support services that could not feasibly be provided by the
30 state in the location where the services are to be performed.

31 (9) The contractor will conduct training courses for which
32 appropriately qualified civil service instructors are not available,
33 provided that permanent instructor positions in academies or
34 similar settings shall be filled through civil service appointment.

35 (10) The services are of such an urgent, temporary, or
36 occasional nature that the delay incumbent in their
37 implementation under civil service would frustrate their very
38 purpose.

39 (c) All persons who provide services to the state under
40 conditions the board determines constitute an employment

relationship shall, unless exempted from civil service by Section 4 of Article VII of the California Constitution, be retained under an appropriate civil service appointment.

(d) A personal service contract is of no force and effect until approved by the State Personnel Board. No services may be provided by the contractor or money paid by the state agency until that approval granted by the State Personnel Board and all administrative appeals have been exhausted or waived. Failure to obtain State Personnel Board approval prior to services being provided under the contract shall be deemed a violation of Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code. A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person to enjoin any violation of this section or Section 19131, 19132, 19133, or 19134.

SEC. 2. Section 19131 of the Government Code is amended to read:

19131. *(a) Any state agency proposing to execute a contract pursuant to subdivision (a) of Section 19130 shall notify the State Personnel Board of its intention. All organizations that represent state employees who perform the type of work to be contracted, and any person or organization—~~which~~ that has filed with the board a request for notice, shall be contacted immediately by the State Personnel Board upon receipt of this notice so that they may be given a reasonable opportunity to comment on the proposed contract. Departments or agencies submitting proposed contracts shall retain and provide all data and other information relevant to the contracts and necessary for a specific application of the standards set forth in subdivision (a) of Section 19130. Any employee organization may request, within 10 days of notification, the State Personnel Board to review any contract proposed or executed pursuant to subdivision (a) of Section 19130. The review shall be conducted in accordance with subdivision (b) of Section 10337 of the Public Contract Code. Upon—~~such~~ receipt of a request for review, the State Personnel Board shall review the contract for compliance with the standards specified in subdivision (a) of Section 19130.*

(b) Notwithstanding any other provision of law, any state department or agency that proposes to enter a contract that is subject to State Bargaining Unit 12 shall notify, at least 10 days

- 1 *before entering the contract, any employer organization that may*
2 *be affected by the contract.*
3 SEC. 3. Any changes made by this act may not be construed
4 to impact, or affect in any manner, the provisions of Proposition
5 35 of the November 7, 2000, statewide general election.